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in the

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United States

Case No. 75-284

METROPOLITAN DADE COUNTY, FLORIDA, et al.,

Appellants,

vs.

AEROJET-GENERAL CORPORATION,

Appellee.

On Appeal from the United States Court of Appeals for the Fifth Circuit, Case No. 74-1192

APPELLANTS' MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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I. INTRODUCTION

The appellee, Aerojet-General Corporation (Aerojet), has moved to either dismiss the appeal of Metropolitan Date County, Florida (Dade County), or to affirm

the judgment of the Court of Appeals. That motion, stripped of its non-essentials, is based upon the following three (3) legal positions:

A. The Court of Appeals did not declare §253.111, Florida Statutes, unconstitutional as violative of the Contract Clause of the United States Constitution;

B. Because the Florida and federal standards of res judicata are identical, the Court of Appeals' explicit choice of federal law with respect to the res judicata doctrine is of no moment so far as this Court is concerned; and

C. The Court of Appeals properly construed §253.111, Florida Statutes, as inapplicable to the 1961 lease-option contract between Aerojet and the State Boards.

The following discussion will establish that each of these arguments is incorrect, and that both of Aerojet's pending motions should therefore be denied.

II. DISCUSSION AND ARGUMENT

A. *The Court of Appeals Declared §253.111, Florida Statutes, Unconstitutional.*

It is Aerojet's position that the Court of Appeals did not invalidate §253.111, Florida Statutes, as applied to the 1961 lease-option contract between Aerojet and the State Boards. According to Aerojet, the Court of Appeals did

no more than determine that §253.111, Florida Statutes, was not applicable to the 1961 lease-option contract.

The inescapable fallacy in Aerojet's argument on this point is that the Florida Supreme Court, in its disposition of Dade County's mandamus proceeding against the State Boards, explicitly held that §253.111, Florida Statutes, *was applicable* to the 1961 lease-option contract between Aerojet and the State Boards. Consequently, the Court of Appeals, under this Court's ruling in *Atlantic Coast Line Railroad Company v. Phillips,* 332 U.S. 168 (1947), was obliged to assess the validity of §253.111, Florida Statutes, in the context of the 1961 lease-option contract *with the gloss placed upon that statute by the Supreme Court of Florida.* Stated differently, the Florida Supreme Court's determination that §253.111, Florida Statutes, applied to the 1961 lease-option contract foreclosed the Court of Appeals from reconsidering the applicability of the statute to the contract *unless the Court of Appeals was acting pursuant to its federal constitutional authority under the Contract Clause.*

That the Court of Appeals was in actuality proceeding under its federal constitutional authority, as derived from the Contract Clause, is evident from the following revealing statement at the conclusion of its opinion:

> "Our belief in the correctness of our interpretation of F.S.A. §253.111 is reinforced by the certainty that if the statute were construed to apply to Aerojet's contract it would violate Article I, Section 10 of the United States Constitution, which declares that no state shall pass any "Law

> impairing the Obligation of Contracts." . . . Any other interpretation would clearly violate the Contract Clause and require us to hold the statute unconstitutional as applied in the circumstances here." (citations omitted) 511 F.2d at 723.

In summary, the Court of Appeals' refusal to recognize Dade County's claim under §253.111, Florida Statutes, to the controverted lands could only have been founded upon the power of the federal judiciary to construe contracts for itself in any case based upon the Contract Clause. Any such Contract Clause-based decision of a court of appeals is properly reviewable by this Court in an appeal brought pursuant to 28 U.S.C. §1254(2). That fundamental principle of this Court's jurisdiction was clearly established in *Atlantic Coast Line Railroad Company v. Phillips,* supra.

P *Florida and Federal Standards of Res Judicata Were and Are Not Identical.*

In arguing to this Court that the Florida and federal standards of res judicata are identical, Aerojet has clearly parted company with the Court of Appeals. After the Court of Appeals determined that *federal* res judicata principles should be applied (511 F.2d at 715-716), it went on to deal with res judicata in the diversity context as follows:

> "Considering this case solely in its diversity aspect also leads us to the conclusion that the federal law of res judicata should be applied. The

> importance of preserving the integrity of federal court judgments cannot be overemphasized-out of respect for the federal courts and for the policy of bringing litigation conclusively to an end. If state courts could eradicate the force and effect of federal court judgments through supervening interpretations of the state law of res judicata, federal courts would not be a reliable forum for final adjudication of a diversity litigant's claims. *Nullification of a federal court judgment would be precisely the result in this case if, as Dade County urges, the District Court had been obliged to follow state law to decide the question of res judicata. Absent other reasons for declining to follow the mandamus judgment of the Florida Supreme Court, that decision would have compelled the District Court to hold that the prior federal court judgment was not res judicata as to Dade County's assertion of F.S.A. §253.111 as a defense.*" (footnotes omitted, emphasis supplied) 511 F.2d at 716.

The foregoing excerpt from the Court of Appeals' opinion conveys a clear and simple message: The judgment of the Florida Supreme Court in the mandamus proceeding established the Florida law of res judicata in a manner adverse to the claim asserted by Aerojet; if the Court of Appeals had deemed itself bound by the Florida law of res judicata, it would have had to reject Aerojet's res judicata claim.

But the Court of Appeals went to extraordinary lengths to release itself from the obligation to abide by the

Florida law of res judicata and to apply the so-called "federal" law of res judicata. For Aerojet to now assert that the Court of Appeals' labors in this regard were completely unnecessary represents a retreat from reality.

The decision of the Court of Appeals to reject the Florida law of res judicata and to embrace what it deemed to be the "federal" law of that doctrine presents a grave question for this Court's resolution under the rule of *Erie R. Co. v. Tompkins,* 304 U.S. 64 (1938); namely, whether, in a diversity proceeding (as this one was and is), a federal court is bound to apply the forum state's principles of res judicata. Consequently, at the very least, this Court should give plenary consideration to the Court of Appeals' choice of law decision under the jurisdiction conferred upon this Court by virtue of 28 U.S.C. §§2103 and 1254(1).

C. *The Court of Appeals Improperly Construed §253.111, Florida Statutes, As Inapplicable To The 1961 Lease-Option Contract.*

At pages 28 through 30 of its motion to dismiss or affirm, Aerojet argues that the Court of Appeals acted in an entirely proper manner in construing §253.111, Florida Statutes, as inapplicable to the 1961 lease-option contract. This claim on Aerojet's part rests upon a peculiar notion as to a "proper" manner of contractual and statutory construction by the Court of Appeals.

Stated simply, Aerojet claims that the Court of Appeals acted "properly" when it explicitly rejected the contractual and statutory construction of the Supreme Court

of Florida in its mandamus decision. Dade County, on the other hand, finds nothing "proper" in the Court of Appeals' refusal to respect the determination of the highest Court of the State of Florida in the construction of statutory provisions of Florida's law and of a contract between Aerojet and the State Boards. The Court of Appeals' independent course of action in this case is not proper because its only logical consequence is the creation of an unseemly conflict between the judiciaries of the federal system and the State of Florida with respect to questions which are clearly disposed of by reference to Florida law.

One final Aerojet argument should be noted. At page 30 of its motion, Aerojet asks this Court to accept the January, 1962, construction of the 1961 lease-option contract given by the Attorney General of Florida and to reject the 1972 construction of that same contract by the Supreme Court of Florida. If anything is clear in the *Erie* and *Atlantic Coast Line* decisions of this Court, it is that federal courts must look to the decisions of the highest state courts to ascertain the applicable principles of state law. The opinions of the state attorneys general, at least where state supreme court guideposts are available, have *never* been annointed with this Court's blessing as articulations of governing state law.

For the foregoing reasons, Aerojet's argument that the Court of Appeals "properly" construed §253.111, Florida Statutes, with reference to the 1961 lease-option contract must be rejected as incorrect.

III. CONCLUSION

Aerojet's motion to either dismiss this appeal or to affirm the judgment of the Court of Appeals should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing Jurisdictional Statement of Appellants were mailed this 24 day of October, 1975, to the following:

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